

The State of New Hampshire

opinion

orig. material
in 257.13

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Concord

June 5, 1974

Harry M. Descoteau
Assistant State Treasurer
State House Annex
Concord, New Hampshire 03301

Dear Mr. Descoteau:

This is in reply to your request for an opinion regarding the participation of certain employees of the Dresden School District in the New Hampshire Retirement System.

You inquire whether the professional and instructional staff member (teachers) of the Dresden School District may elect to participate in the retirement systems of either the State of New Hampshire or the State of Vermont.

The answer to your question is in the affirmative.

The Dresden School District adopted the provisions of the New Hampshire-Vermont Interstate School Compact pursuant to RSA 200-B:1, Article XII (supp). Therefore, the employees of the Dresden School District are governed by the provisions of RSA 200-B (supp).

RSA 200-B:1, Article X, E 2 and 3 (supp) provide as follows:

"2. Employees of interstate districts designated as professional or instructional staff members, as defined in article I hereof, may elect to participate in the teachers retirement system of either the state of New Hampshire or the state of Vermont but in no case will they participate in both retirement systems simultaneously.

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3. It shall be the duty of the superintendent in an interstate district to: (a) advise teachers and other professional staff employees contracted for the district about the terms of the contract and the policies and procedures of the retirement systems; (b) see that each teacher or professional staff employee selects the retirement system of his choice at the time his contract is signed; (c) provide the commissioners of education in New Hampshire and in Vermont with the names and other pertinent information regarding each staff member under his jurisdiction so that each may be enrolled in the retirement system of his preference."

Section E2 quoted above authorizes professional and instructional staff members of the Dresden School District (which is an interstate district) to elect to participate in the teachers retirement system of either the State of New Hampshire or the State of Vermont.

Section E3, quoted above, states that it is the duty of the superintendent of an interstate district to instruct the employees of an interstate district of the terms of the retirement systems so that they may select the teacher retirement system of their choice of either the state of New Hampshire or Vermont. Therefore, it is the intent of the legislature that such employees may choose to participate in the retirement system for teachers of either the State of New Hampshire or the State of Vermont.

RSA 200-B:1, Article, I C.j.(supp) provides as follows:

"The terms 'professional staff personnel' and 'instructional staff personnel' shall include superintendents, assistant superintendents, administrative assistants, principals, guidance counselors, special education personnel, school nurses, therapists, teachers, and other certificated personnel."

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Teachers are included under the terms "professional staff personnel" and "instructional staff personnel."

The only limitation on an employees' choice of a retirement system is that they cannot participate in both the New Hampshire and Vermont retirement systems for teachers simultaneously. (RSA 200-B:1, Article X, E, 2 (supp)). There is no provision permitting a teacher to switch year to year from the New Hampshire system to the Vermont system or vice versa. Thus, the teachers who are now under the New Hampshire system may elect to join the Vermont system, but they cannot elect to rejoin the New Hampshire system as long as they are continually employed by the Dresden School District.

The State of Vermont has enacted an Interstate School Compact similar to RSA 200-B (supp). RSA 200-B (supp), the Interstate School Compact, became effective on September 1, 1967, subsequent to RSA 100-A (supp) New Hampshire Retirement System, which became effective on July 1, 1967, and thus RSA 200-B (supp) supersedes RSA 100-A:3, I (supp) insofar as authorizing New Hampshire teachers to join the Vermont retirement system for teachers.

RSA 100-A:3, I (supp) provides in pertinent part as follows:


"Any person who becomes an employee, teacher, permanent policeman or permanent fireman after the date of establishment shall become a member of the retirement system as a condition of employment; ..." (emphasis added)

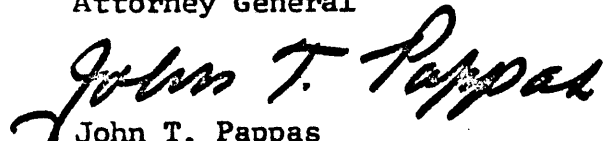
The above-mentioned retirement system means the New Hampshire Retirement System (RSA 100-A (supp)) which became effective on July 1, 1967. Thus, all teachers eligible to enter a retirement system in New Hampshire after July 1, 1967, must join the New Hampshire Retirement System and cannot join the Teachers' Retirement System (RSA 192), an exception being those employed by an interstate district.

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It is the opinion of this office that professional and instructional staff members of the Dresden School District must elect to become members of either the New Hampshire Retirement System or the Vermont Retirement System for teachers but cannot become members of both such retirement systems simultaneously. It is the duty of the Board of Trustees of the New Hampshire Retirement System (RSA 100-A:14, II (supp)), the Superintendent of the Dresden School District and the Commissioners of Education for New Hampshire and Vermont (RSA 200-B:1, Article X, E, 3 (supp)) to establish the administrative procedure by which such employees shall make such selection and this opinion cannot instruct you as to the best or proper procedure to carry out such administrative duties.

Sincerely,


Warren B. Rudman
Attorney General


John T. Pappas
Attorney